THE NEW FEATURES OF OUR CONTRACTUAL SYSTEM

Prof. DR. IMRE SÁRÁNDI

1. We have to seek the new tendencies appearing in the contract condicions of the ecenomical organizations, not so much in the characteristics of these contracts, but in the disposition referring to the *general rules of agreements* under the modified C. L. (1977 annual IV. 1w.).

It was impossible to attain these rules by the means of an even road, nor by an unbroken impulse. The socialist common-law of Hungary has made almost the same development in its contracts of economical institutions, as the progress of Law made in Europe (World), up to the present time, since the disposition of roman-law. Whether it was necessery to make it that way, or not, it is not for this treatise to decide.

This time we remain by historical fact only, and not story writing, rather to try to begin in historical perspectives, a short socialist – and here analysing the hungarian progress only, maybe taking also the chance of being antihistorical, and perhaps with enough conviction we can gladly accept it – we want to show, that every start is difficult, also that, if we make of this difficulty of beginning, a binding virtue, it stops-short, or slows-down the development.

The underestimation of the common compulsory force of contract, and the overestimation of the role of standardcontract, undoughtedly manifested itself at the early stages of building socialism. One also comes across a certain occurance of atavism in the contract system of the old administration.

Vékás points at – using an enormous wide scale of researches – the long extention of time it took to acknowledge, and to have the common compulsory force of contract recognised as such in the continental law, which were based upon the roman-law, and also in the field of the supplementary common-law. He sees the reason for this mainly in the demand of goods being underdeveloped, or might have been developing powerfully, but were based on the great reputation of the roman-law, and yet in Endland the ideology – established on the effect of the compromise revolution – were having difficulty of accepting the common compulsory force of contract. Referring to those times and the outcome of that time, he writes the following way!

„Summing it all up we can say, that the codifications passed of at the turn of the 18th 19th century have had decisive significance of the future of standard contracts. Law-books being created at that time „so to say" have passed the standard contracts from common-law – taken their origin from the roman-law-, into the capitalist private-law: so in the consequence of acknowledgement of the common compulsory force of contract, the standard agreements lost their old functions and gained a new mission as creative elements of the Codes. Some parts of the standard contracts by the extinguishment of standard coercions – recapitulated from roman-law – have become the kernel of the universal norms of contract, and although meaningless and beside also converted their functions, were competent to be the fundamental principles of the contract law in the law-books. The civilcode above all, and the Austrian ABGB too, definitely reflect this transformation: the individual standard-agreements are the building-materials of the Codes, which – with their dispositive rules and concept – determinant declarations – were to secure the orientations of the financial turnovers, flowing between the wide-cut banks of contract freedoms of the bourgeois, through the means of giving help to the decisions of the litigations."[1]

Lookind at the development in Hungary, we can observe the following: the time since the liberation of Hungary until now, in the conventions concerning the institutions of social property, and also in search of the theory: between the years of 1945 – 1950 the common obligational force, and from 1950 – 1969 the standard contracts, have had the greater significance. After the year of 1968 in a peculiar way a "double authority" is being developed. On one hand the number of *standard contracts* are *increasing* among the managing institutional contracts, and on the other hand the recognition of the *common obligational* force of contract is developing more and more.

If we total up the power of this "double authority", and of those "taking part" in it, we find, that the public ownership – respectively in the circles of contracts of the managing organs – the standard is dominating even this present time, (reflects this the increasing number of standard contracts, and their rugulation by the law) exceptionally by those cases, which are standing outside the C. L.; but the acknowledgement of the *common obligational* force of contract more and more increasingly pushes its way through in the legislation.

The main stages of the route: the early parts of the 1950's: there is no C. L. the contracts settled by public ownerships are standing outside the public-law, they do not belonge to the there established agreement typs, nor does the gereral rules of contract refer to them. Among some managing organs, and among particular owners, there is only one way of signing a contract on certain products acknowledgeable and sanctioned as binding agreement by the practice of the Court, and the board of referees.

The control of administration makes it impossible to conclude any other kind of contract. Among the managing organs of – except in the

relation of turnovers between wholesalers and retailers – there is no "googs" contract to fail a delivery agreement.

After the C. L. in 1959, the situation in principal is the same, but there is already a certain amount of progressing "backwards". The general rules refering to the contract law part of the C. L., do not yet really affect the contracts of national economy, but there exists already the "plancontract", a combined category of agreement taking up position in the cases of individual agreements. In comparison to the 198 §, declaring the common compulsory force of contract, they can be regarded as the penurious unassuming *general parts* of the national economical contracts, staying always outside the C. L., and also as some kind of *independent agreement*. The text of the statutory provision distinctly point at this. However even the practice of economical decision of court, only in case of "emergency" turns to the 397 §, and 407 § of the CLb., and takes a greater consideration in account, to this chapter of the CLb. only after the economical reform, and even then, – so far it is possible – stays at the single – behind the stronghold of particular plan – contracts, in reality consisting of mainly individual characteristics – (it is revealing, that in the publication called the "With authoritative positions taken by the Highes Court of the CLb. (1975) had not taken any of GK. GKT. positions in this publications, which were dated before 1973). We have to look for the reason of this at the next stage of progressing "backwards".

It becomes evident, mainly at the preparation of the administration's new force of controls, but particularly in the circumstances of realization, that those few "plan contracts" recognised as such by the law, are not able to fulfil the notes of "contract" of the economical life.

The csange stars in two directions. In one way by multiplying the species of agreements, on the other way by modifying (in more places) the "general" part of the standard contracts. The love for standard is still very strong, but the desire is always greater of getting away from this prison of standard into the free course.

This motion is particulary vivid among enterprises, building up activities which are more and more complicated, and versatil. Free course, colorfull meadow will not be just yet, but the rooms of the towers are increasing, and are getting full of charms (increase in number of standars), and on the "path of sronghold" the respiration becomes always easier. (The modification of the XXXV. section of CLb., and the more frequented look-out of the judicial practice).

The only possible way to escape from this prison of standard leeds even afterwards mostly to the general rules of "combined standard", there is no question about the general rules of agreement and obligation drawing attention in *practice*.

It was hardly possible to make an application to them. Surely, the greater part of CLb.'s general force of contracts were not meant for this. Before this, statutes had to be made suitable to give support to the mass production (mass turnover industry), and also to the contracts of single

settlements concerned great investments. Before discussing that, we have to examine, how our civil-code after its modification, is capable of accepting these contracts, and how much the general part is prepared for the outcasted standards of the compulsory force of agreement to be based upon, even to be possible if they stem from national economy.

The codificational consequences of the years of 1977 – 78 could be summed up in the following. The standard agreements of national economy have gained their places in the CL. (transport contracts ans municipal services, chapter XXXIV. The undertaking [understanding by that the contract of the labour and material of the enterprises too], are denominating separately, the building-contract, project-contract, installation-contract, research-contract, and travel-contract, the XXXV. chapter of C. L.).

Bulk delivery of the agricultural produce contract, is also presented with a larger scale of codes as before. Between the individual contracts, rules such as bank and credit conditions are taking place, which typicaly refer to the emerging law conditions of economic organizations (C. L. chapter XLIV). The convencions of companies have been changed, a good deal of its concrete arrangements can be also applied to the managing corporations of economical bodies (C. L. chapter XLVI). It is by itself a significant measure. Even more important as that is, the elimination of the pld chapter XXXV, of which hase been already said, that it has presented the penurious unassuming general parts of certain strongly standarnised, and a world closed in itself, treaties of national economy, under the name of plan-contracts.

The most significant codified result was undoughtedly the radical, resolute, well thought after, and on the whole, very successful transformation of the general rules of agreements. Now, and now only, the general part of the contract law has became competent to embrace, and cherish the contracts of managing corporations. One can certainly argue about some of the new conventions (this time not however our aim) but the whole composition can be regarded with attribution of highest degree. Such a transformation of the general rules of contract-law, opens a wide route of implimentation to the "breaking out of standard force" (because it is in vain for others to say, that it does not exists, it still exists) the meaning of the contracts are being accomplished, which are suitable to their common course, and the so developed legal settlements – according to the new rules of the general part – on the basis of the general compulsory force of contract too-, and not only, when they fit into the standard, could get court defence. Today it is only a possibility, and in all probability far away too, but it is a possibility.

What gives this hope. How did it possibly change, so much, important general part, the nature of the general rules of contract. We should point at two phases. One falls on the law-policy, the other, on the field of action of the concrete codification. The decision of law-policy: the standard agreements of economical organs do not form *separata law-material*. They do not in two meanings. They do not belong to a law sec-

tion existing, or being due to be established in the future, – economy-law-, but they stay within the civil-law, and even there they do not live their way of life surrounded by glass spintered lofty walls, apart from the rest of the contracts of the civil-law, but they settle – keeping many of their particular features – within the populous and gaudy family of contracts in the civil-law. The codification had also a dual task. On one side to demolish the prcautionary walls of certain contract of the national economy by modifying more or less the separate rules of single contracts, than on the other side, that was the harder bite, to make the general rules of contract suitable for receiving the standard contract of managing corporations, into the contract law, for also these agreements could, the law-material relating to the "*contract*", have as "background-law". On behalf of this, the rules had to be layd down, or assigned from sowhere else, which – commonly expressed – are suitable for largescale model.

This of being suitable, has a triplicate criterium. At first the general rules of contract should be qualified to help the mass-turover origining from mass-production transacting (mass-contracts), secondly should be able to transact the individual large-investments, and to solve activities of very important complicated juristic economical technical matters (individual-contract), and finaly and thirly, to compose those requirements, demanded of the socialist economical organs, in the fields of trade-life (for example co-operational contractual duty etc.).

If we experiment, to make a bunch of the rules, serving this treble target, we will not find it difficult. Following the sequence of the rules: within the general rules of contract will be formed the *co-operational liability*, also required by *contract signeing*, (CLb. 205§ (3) sec.)]. Among the general rules we find the provisions, referents of the agreements, being induced on the liability of treaties (CLb. 205. § (3)–(4) sec., CLb. 206. § (1)–(3) sec.), *the invitation of tenders* (212. §) *the judicial power to institute agreements*, which on certain conditions bears on the establishment of the content of agreement, on its modification, on its rescission and cancelletion, and on keeping in force of the contract (CLb. 206. §.). We also mention the new provision concerning the representation of *legal entity* (CLb. 220. §).

The preliminary agreement (CLb. 208. §) can be applied primarily to the economic organizations, because from the ranges of these are chosen the signatories of agreement, who with a consideration of the unknown requirements, under their own names, and of their own account are drawing up the contract, without being able to sum up the unknown requirements exactly, or being able to influence these tendencies. The possibility of having the *general reserves of contract* avoided by the law because of the contents of blanks, is a gratification of an old demand aroused in the first place by the activities of the economic organizations. (CLb. 209. §). We can also include here: the 226. § ruling the relation between the *statutory law and the content of agreement*, the paragraph 200 of rescission, the *general permission of the redressing of voidness* 237. §

(2) sec., the settling of liability for *breaking enforced contract* 238. § (1) sec.

The safeguards of contract widened with bank assurances (CLb. 249. §). The 4th section of 278. §, enclosed in the general rules of agreement, decides, where the place of fulfilment is, if all parties are organizations of the economy. The 277. § is a new feature, which with *positive orders* settles the adequancy of services. The same paragraph, section (2) and (3) by the completion of contract ordains the indispensable *general*, respectively *particular co-operation*.

To accept *responsibility* for breaking contract (security, warranty) and the rules of *responsibility* (CLb. 305—311. §) (248. §), respectively 300. § (3) sec., are pressing the economic organizations to complete to satisfaction and in time. Th former by pressure to take greater responsibility of redhibitory defects, the latter, — in accordance with other rules of liability- by stating the compulsory *undertaking of additional time-limit*, respectively urging the fulfilment in time, and to keep the agreement within the limits of possibility. We could mention the CLb. 316 § (2) sec. too, which also gives an aid to reasonable completion. The *severance pay*, and the *minimised penalty* stipulated by the statutory provision (CLb. 246. § (4) sec.) are justified in the agreements of economic organizations. Finally the rule included in CLb. 314. § (2) sec. has an outstanding significance at the "reorganization" of standard part, which states, "legal entity can not exclude, or restrict his responsibility for braking contract — unless othervise provided by statute — except if the disadvantage attached to it is being satified through adequate reduction of compensation, or by other preference".

But why is so important the general part of the contract law, why do the general rules of agreement have such great significance? Perhaps do we not overestimate the importance of general rules, in the circumstances of having quite a swarm of standard contracts standing at our disposal with ever increasing number.

Generally could be said, that the Civil-Law book of any society, can not exist without a well founded general part of the contract law. The conventions of individual contracts can not replace anywhere the rules of "*agreement*", if there is an advanced turnover co-operation and associative tendency among the economists.

"One can not demand, that a law-book should have a literally definition of each transaction, which could appear by turnovers. The code, that clearly defines the general principles required to decisions, and takes the whole context into account, deserves appreciations. Beside such an accomplishment most of the questions could be easely answered, about which the followers of casuists fretting their heads and pens", — writes von Tevenar (1783) the provincial Prime-minister of Magdeburg, the head of one of the Codificational committee. w.).

The rights and liabilities arousing by the individual kind of contracts, could be defined without any difficoulty with the interposition of general

principals of the law of treaties. Nevertheless for the benefit of the jurists just beginning to excercise, to make their work easier, and to sharpen their power of judgement, we find it necessary to insert some of reputed contracts in the Code", meant ɔeiller the father of the old CL b.[3]

Developing the train of the thoughts, he followed, the big but naturally difficoult art of the legislative stands also at the question of giving neither too little nor too much.[4]

We risk an evolving standpoint aiming even further than that: The greater is the increase of numbers by individual contracts and standard contracts on the codes, or rather, in the rules complementing them, *all the more increases* the meaning of the general conventions of agreements. This conclusion becomes immediately acceptable if we consider, that the variety of contracts are comprehending always a smaler range of the turnovers. If we do draw a parallel between the rules of trading and, lets say, of trawel contracts, we find, the first one is more common, than the other one.

The trading is – compared to the general rules of agreementless unusual as the traval contract. It also results, that the trading – most of the rules of the general part origining of its abstraction – could rather dispense the standard part as the travel contract. The contact typs becoming always more specific are concentrating narrowly at their own subject, because also of codificational economics –. The legal material aimes at the narrow subject as a target. Becoming strongly special even itself. Nevertheless, between the narrow boardiers, there is the whole life present. During travel a number of such problemes could arise, which can not be settled by statutes being concentred on the particular circumstances. We could say, if the complication beyond the travel contract, but emerges during the journey, dowe not have to cinsidet it ? Of course we do. However, since the rules of travel contract do not give answer to the "quid iuris" we have to apply to the general conventions. An example. The journey is by aeroplane. The passengers are arriving at the wanted target. There each of the to their own pleasure, or perhaps organised, are spending the time. Almost everybody buys something. The day of return has come. The participants get on the plane, and the plane starts off. The anxiety, customary by such ocasions, had hardly gone by, when the stewardess, or the pilot of the plane gives the information, that Budapest can not receive them, they have to land, moreovar, at an airport of a country, where the aeroplane, under normal conditions would only fly across without stopping. This is known to the local representative of the aircompany. He turns up at the airport, where the emergency landing was indicated, and takes care of the passengers. The worthier agencies put the unfortunate passengers into transit hotels, the indifferenter, and the poorer put them on the train. There is no appeal. The customfree waintingroom must be left, and the land of the airport has to be entered. At the entrance are standing the customs-officers of the "receiving country" and let the passengers pass through the customs (they have the right to it, since they entered the country concerned).

Few of the passengers have purcheses, which in the country they started off are not falling under export-duty, and in Hungary there is not import-duty on them, but in the country of emergency landing are liable to duty. The passenger who entered the country for reason beyond his control, either pays the high customs fee, (what is almost impossible, for the turist in the rarest occasion have currancy) or have to hand over the purchases being liable to customs, to the very polite, but nevertheless, firm customs officer. Who will compensate the loss? There is no pass of that in the travel contract. The fulfilling of commitments, or responsibility of aircompanies and travel agencies, include such damages? By all means yes. Damage has happened, the reason to exclude illegality, does not exists, moreover, neither the air company, nor the travel agency proceeded with the care generally expected from them in this particular case. But this demand could only be based upon the 339. §, with the interposition of CLb. 318. §, or upon other rules of the general part. The modification, in the discussed manner, of the general part of the contract-law, inclusive the general part of agreement, is a significant achievement, also as regards the international measures, weil the systematization of contracts of economic organizations, is not only a problem of Hungary, but a problem of all other socialist countries.

The other range of definitive problems of the contractual system is uptill today represents the systemization of contracts, signed by the socialist organs among themselves. Gives proof to this the fact, that very different tackling of codifications arised in the europian socialist countries, the economical complete leagaly separation (Czeho-slovakia, German Democratic Republic), plan contractual (inner) differentation (hungarian civil-law-book of 1959) and the aiming at the homogeneity of system (chiefly in the Polish code of 1964).[5]

It is very likely, that these settlements are in accordance with the economical system functionable in the mentioned countries, conversely a system of administration control, based upon a methodical market influence, showing more orr less deviation, from theirs, -n my oppinion- has now found a resolution of turnover-law by precisely setting them into the civil-law, and not for last by the reorganization of rules of the general contracts, and though the sequence of economy in the mentioned countries bears no resemblance to the hungarian codificational accomplishments, merely from the point of view – according to our observations – that the contracts of national economy, could be well adapted to the contracts of the civil-law, only than, if the contracts of general agreements also make allowances for the particular constitutional requests, systemising the connections that of turnovers and individual, between the organizations of economy. The long and the short of it is the following, *the voulting point is the adaptation of the general forces of contracts to the standards of massturnover.*

At the beginning of point (1) we have taken in stock the new regulations – referring to our theme – the general parts of contract law. We shall now single out one, or two of them, regarded as more important,

and already have some experience, and also have developed some theoretical arguments, now we shall examin them.

In our modern age strikes us some of the new ways, and the statutory provisions attached to them of drawing up contract. We are far away by most of this contracts signeing from the classical form, which according to the mutual opinion of many others, a contract comes into existence by mutual will of act, tending to legal effect. How the law, from the demand of actual will comes to the point of not claiming it any more by drawing up contract, is described in many places by Eörsi.[6] The main stages of the route; *a)* The demand of genuin will, *b)* trusting the principal of statement forward, *c)* the statement becomes fictitious, too *d)* the economical and legal coercions replaceing the will. It is a general tendency in the modern capitalist's, but in the socialist's law too. But still the socialist jurisprudence demands at least the fiction of will, the bourgois, first if all the scandinavian legal experts take into account, that certain conducts are followed, by the fact of conduct itself, by such consequences, as there already was an agreement of will.

"Vékás writes: the legal cosequence is being emphasised, regardless, it is in an act of (symbolised) verbal form, in operation, or in out of action."[7]

Than he quotes Jörgensten: "when an attitude arouses, which is normaly used in connection of defined complexes, than these typical legal consequences usually set in by the rule".[8] In every contract the partipians are "wanting" something, but it is not at all sure, that all happens the way they want it to happen.

"Drawing up a contract is like pressing a button, and as a result of this, appears a box. The box contains not only the will of the participants, but many other matters as well. Matters in consequence of the standard agreements the parties wanted, and also matters they did not, or one of them did not want, (for example: the objectively based interpretation of contract attache other meanings to the expressions employd there, as the participants, or one of the participants. The reality of agreement therefore, is not in co-ordination with the content of combined statements of the will. Pressing of the button did not result a "specific box", but a tsandard one corresponding best to the purpose of the parties. Therefore, also the court of justice takes the aim of the participants, and the standard agreable to it, into consideration. Makes an affort in the first place, to identify the agreement with a standard already known, failing at that, makes an affort to establish a new standard." This has been quoted from Olivecrona.[9]

We could find similar thoughts in the hungarian civilistic: "It is not the subjective will, but certain objective bases of the fact are those, to which the claims and their influences are attached."[10] Or the other one: Subjectivism originates all the effects of contract from the inner will of participants, based on the principal of the pacta sunt servanda, which raises to a legal axiom the german proverb "Des Menschen Wille

ist rein Himmelreich" in the rights of these people (by the Romans, and by the English, the explanation is from me S. I.) is unknown.[11]

Exists there in the reality still a free contractual will, contractual freedom, and if there is none, or have no importance, what other factors are mouving the being of turnovers, and what other factors determine the contents of the contract? Further on we try to seek an answer to these, at first in general, than examining a few contracts of the economic organizations. As by other questions of great consequences, we could not possibly give a definite yes, or no answer of exists a freedom of contract there, or is there a free contractual will, and what the meaning of the will is, in the world of affairs of civil rights. We could not even declair the existence of contractual freedom in some of the standard contracts, and, that the contract is completed according to the will of the two, or more participants, according to the same will they have exrpessed, and in other contracts do not. All contracts have to contain some kind of contractual will. The free will, and the contractual will, does not succed the same way everywhere, and the content combination of the text differs also from the will of participants, in various contracts.

It can be undoughtedly stated, in the contracts of the citizens with one and other, or rather in the contracts signed for the fulfilment of their personal needs, the contractual freedom succeeds in wide scale, but as we shall see not in the absolute meaning of it. It is forthe subject to decide; does he intend to sign a contract, with whom he signes it, what the object is of the contract. His contractual freedom is as far, as in a society founded on division of labour, determined, he must sign certain agreements, to meet his needs. We can concerne this as *general legitimacy*. However, after the decision of the individual, wheather he want to sign a contract *to meet his concrete requirements*, or not, factors intervene, already, restricting the contractual freedom. To meet his needs, he could only turn to certain economic organizations, for the economic organizations have monopoly in the district, or in the whole country. He ha perhaps so much possibility, to choose an other brach of the same enterprise, if he is not satisfied with the purchases, or services of the former one. But if he does go to an other one, the terms he finds there, are nevertheless the same. The right to choose the partner is, – to meet their personal requirements, the citizens, in contracts entering with economic organizations, – however, in most of the case is only an illusion. What about the object of the contract, does it really turns out the way the individual wants it, or the way the two partners freely agree on. Not at all, happenes like that.

In certain cases the object of contract can not be choosed any more either, perhaps in general, because the factors of quantity, but in most cases the factors of quality are specified by the economic organizations. Example; Today is someone goes to a restaurant of public catering to have lunch, he does not have what he wants, but what there is to have. Only through faded remembrances, and from recounts of elderly people, knows the generation of today, that there was a time, when a keeper of

a restaurant (inn-keeper), has made the most loved meal of the dear guest, and prepared the way he wanted it. Today the menu decides it. If it includes the favourite meal of the dear guest, he can have it, if it does not, than good-bye. The consumation, and also the guest are both manipulated today. They are manipulated in the service of vavourable transaction of mass-turnover, and standardisations established by the economic organizations.

In other cases the time of fulfilment does not depend on him. If someone buys a car over here, – this serves also as supply of needs – the saler a monopol organization, (which has been wrongly placed in the position of being the monopol saler of used cars, instead making efforts to detect the singular abuses) sets onesidedly, the day of delivery. It is a luck, if that is kept.

In the measures of counterservices, again, in most of the cases, there is no argument. The prises are though officially fixed prices, or are from-to prises, but even there, the concrete prises are not settled by correspondance of wills, but by the enterprise, which regulates the daily, weekly or monthly prises.

The terms of payments do not represent either, a matter of dealing – it has a meaning at buying on hire-purchase – or the mutual will, they are already there, set. The purchaser lays down x amount of money by the signing of the agreement, the rest of the prise has to be payd on the terms of the very enterprise, or on the terms of the organization, who gave the credit (OTP.). The one they make exeption with, is a friend of God.

The place of fulfilment is also determined by the firm. In case of articles in daily use, is usually the company, shops, or stores of the enterprises. The shop-assistant is rehaps prepared to undertake the arrangement for delivery by reason of instruction (furniture purchase).

But the responsibility for the loss, or damage of the furniture, does not concerns him anymore. The shop-assistant by handing the purchase, from the shop, or store over to the customer, has finished his task. Only a few of the provision companies are offering home-delivery for customer, on purchases have been ordered by them, but lately, the number of those few are decreasing.

Singleing out one of the closer methods of fulfilment, the packing of the goods is there, regardless of it is for next door, or being taken hundred kilomter away. Most of the goods are packed beforehand in certain quantities the customer can not demand to have them weight again. From the examples we stated above is to be seen, that the contractual freedom consumer and economic organizations is at its minimum, and the object of it not at all depens on the will of agreement. There emerge the situation, described by Eörsi: "The exchange of goods can lead to an agreemnet even if there is no contractual freedom, if the will is fictive..... provided, that the *form* of agreemnetis there (the italic is mine S. I.)"[12]

Following necessarily the technical development is the "restriction" of the contractual freedom, – and because of the contractual freedom itself has no wert of positive, or negative – the restriction of it deserves neither tears, nor anger".[13] Eörsi does not naturally submisse to the restriction on any account, and lashes all the solutions which are produced by the capitalist regime, and what against the humanitarian representatives of jurisprudence are also raising their voices. He objects to the one-sided conditions of the "adhesive", the "blanks", the "dictated", to the "abuse of distortion", and against efforts of the enterprises such as adjusting "not through public chanels" their economical relations. He condemns the practice, what is used as a fundament by the "mights of economy", with a reference to the contractual freedom, and ceasing that contractual freedom by the very party they sign an agreement with the large enterprizes are possesing a "quasi-legislativ power", and also, that the "juristic super superiority" originating from economical superiority, even in the case of legal proceeding makes the situation hopeless for the signatiry, in the contract with large enterprises, than he remarkes: "*these formations are therefore necessarily established by mass-turnover, and mass-buisnesses:* mutatis mutandis come into existence in socialist relations too.[14] We follow here the mental process. If the restriction of contractual freedom "mutatis mutandis" exists also in socialism – we only mention here the contractual freedom of the citizens-then also "mutatis mutandis" existing the origins of restrictions. Some of them are the same as by the capitalists, the others are resulting from the contemporary, the existing, in Hungary existing circumstances. It happenes "mutatis mutandis" that these restrictions really do not deserve tears, or anger, but there are such cases aswell, which deserve not only tears, but screams, and in the scholar give a rise to a desperate anger for the alteration, being anxious about the *human*. It were sheer madness to raise a voice against standardisation, against the blanks, for they make the signing of contract easier, and also against the monopol situation, which brings the turnover up-to-date, *but one can not resign to everything*. Neither in the socialism, nor for the supporters of socialism. The technical development carries always a large amount of danger with itself, and it will be the same in the future too. The danger, are coming on one side from the technique itself, (risks of accident, environmental vitiation, the extortion, or squandering of manpower), on the other hand from its social consequences (economical overpower-exploitation of monopol situation, legal superiority, onesidedly favourable specifications, and manipulation of consumer). What ever had happened to the humanity, if everybody always sees only the advantages, and do not notice the disadvantages as well. What ever will be of socialism, if we in the rave of "modern technique" do not notice its natural, economical, social and within that, legal deleterious effects. There exists a free pass though, but it originates also from the socialism of today. From the fact, that the countries of present socialism, in serving the consumers are behind in many ways of the fully, or average advanced countries

of capitalism, and that it makes us inclined, to adore the results, still in the race of catching up, regardless how they arise. But we have to race our voice in the interest of present and future, againts the "injuries" both, that of technique to nature, and to society. To return to the restriction of contractual freedom, we shed tears at, and be angry with such restrictios, which derives from creating artificially monopol situations, – by state – which do not even serve the development of production or return, that the assortment is too little, – though it could be bigger – that the enterprises are manipulating the consumer, – to keep an eye on their business interests, and often merely of leisure –, they take the money from the customer in a promisse of uncertain delivery, – merely because of national interests – that in the interest of establishment of really necessary situations in the distant future, restricting now the turnovers of certain possessions (estate), to provoke the worker to distored consumption, to use the law amiss also by necessary conclusions – because of the state does not know the influence mechanism of the law-, also that in the case of fixed prices it is the company, who dictates the concrete prices, – and against that, as last mean could be officially intervened only in case of making inscrupulous profit –, because of the failing of healthy competition, which could result not only the increase of prices, but also the decrease of them, – that the increase of prices practically are always affecting the goods demanded by pretentious customers-, and the official corporations for fixing the prises do not notice, or do not want to notice that the goods with extreme low price level (bread, bakery, flower) are waistfully consumed by all levels of the society-, also what is lost on the swing, is made up ot the rounds, the undertaking, the retailer, and often the sales assistant too are in the possition to make an artificial shortage, and to demaud on the top of the price slipping-money, and so on. The contractual fredom in some cases is of great value, and should be looked after. It is not enough only to declair it, but something should be done about it too. The environmental atmosphere of economy should be in certain cases groundly changed, to give chance to customer to choose in enterprise, purchases and in agreements, to be able to participate his will, derived from his interest in the content of the agreement, not to be the puppet, on the string of, into monotony crippled, large manipulators. It is a vain illusion – and a needless effort – to trouble oneself for the re-establishing of the classical freedom of contract, but it is not a don Quixote like eagerness towards the consumer's free will to be able to succed in larger scale.

There are such field of technical developments, which offers quite new foundations to the establishment of the contract, moreover in mass and this process spreads. We think now of the automats, which are ejecting foodstuffs, if the customer inserts money, we think now of the conductor-free vehicles of the city traffic transport services, and if the passenger gets on to it, then comes an agreement into force between the passenger and the transport company, now we think of the parking of a car

in a parkingplace, where one has to pay for that piece of road but the car will not be looked after, and the self-serving stores, where, by the taking of the goods from the shelves, developes the situation equal to agreement, the establishing of a contract does not need any pronouncement of will, the fact itself brings it to operation, and the formating of its content, has nothing to do with the signatory. Getting so far, we put the question, — to keep an eye also on the contracts of the economic organizations signed with each other, than we put it again —, if the will of the parties, or one of the parties do not prevail, what is the security of, this contract is being the right one for the benefit of the sharers ?

The signification of the agreement increase in the contacts of economic organizatios. Since "he reforming of the nomical mechanism, a change has entered in its role, what could also be nicknamed as determent, in two directions, at first, the contract is not a simple plan enymore, broken down by the control of administration, and as naturalness compulsory to the organizations, as the shell of civil-law, but it has an "individual life" and is th agreement-stock of the enterprises, this could serve also as the base of enterprise-planning. Secondly, these changes have to the agreement itself, important consequences. Wide-known works have dealt with the modified role of the agreements, also with the transformation of them, therefore we neglect to analyse it in detail, rather calling attention to the novelty, experienced recently, before all, by the modification of the civil-law book, and by the new statutory provisions brought forth in connection with the modification, respectively by their application in the practice. Must be mentioned — we think so —, the effect produced on contract by the functions of the agreement, the significance of the contractual will, and the multiplication of the species by the agreements.

Contracts signed between the economic organizations with regards to the role they play in the broader meaning of turnover, we can devide them into two large groups. Classifying into the first one, the *mass-turnover*, (of buy and sale character), and into the second group, the agreements, for the development of important *individual projects*, and also of other contracts tending to settlements of *individual nature, of complicated, fully activated economical functions* (of tackle, and partnership character). The contracts belonging to the first group, are serving the intersections of repeated transactions of standardised mass-productions. The partners usually, are in constant touch since a longer periode with each-other, and the objects, and the contents of the from time to time renewed agreemets, have become stabilised. They define the services specifically (of closed race kind). The constancy gives a pissibility to use blanks at the agreements, — by standard cases — the simple acceptance of the blank-offers (order), the contract (sending it back signed) is completed (transport agreement, sale of consum article agreement). But reversely, the contracts signed by economic organizations, the contracts belonging to the second group, the cliant there have no permanent connections, or though permanent, but each contract refers to

a setting up of always deifferent objects, (the company's corporative, the sharers of agreements with different co-operational tendencies, are meeting each-other for the first time at the preparation and the completion of the contract, the investors, who are perhaps connected for decades now with the same executor, and projector, but each of the contracts tend to a different service).

As a result of this, the content of the agreements has not been stabilised, and by each contract – in spite of certain constant elements – it must be prepared and discussed again, and again. The objects and the activities aiding the fulfilment of the agrement, cas ae though stabilised, (such as buildin elements in building-contract/n machines, production-lines in the contracts of technological installations, bnd certain actions in plancontracts), but result always in an *individua, procudtion*, a result, could not be called into eqistence, with just any kind of activity. The characteristics of these contracts are eqactly, that complicated economical activities with great importance are being developed by the (technical, economical, economical estimations, ,cence, konow-how, and other kind of economical, technical, transmission of kowledges etc.). It is impossible to standardise the contractual conditions because ofethe variety and perpleqity of them, and also the agreement can not be completed by simply accepting the offer, the order, the contract-plan, or by aknowledging, signing and returing it. These contracts no mass-agrements, but thay are *,,singular", occasional"*, anh they could originate, and have originated –as we shall later point it out– agreements of *,,self adjusting"*, and *,,out of law"*--. The contractual act of will –closer, the will– have a different role at the agreements by ,,standard" reserve, and a different one by the indivisual ,,sel-adjusting ones. We could not angularly Say, that the will of the cliant, or any of the cliants, plays no part by the standardised reserves, and by the individual contracts they do. The truth is in between.

The role of the standardised reserves – if we grasp them at their original state – is there to simplify the drawing up of a contract. The enterprise with a turn-out of mass-production, services, and assurances, through the help of their own produced blanks, and general terms of business[16], informes the cliant who wants to, or has to sign an agreement with a standing device, about the main conditions pertinent to the content of the agreement, which they wish to use as the condition of entering into contract. If they are disclosed by blanks, – and the cliant sends it back signed to the other party –, it stands for an offer, after a simple consignation – when it comes to force – the contract by form too, is established according to the blanks. But the cliants have the opportunity to leave off some of the conditions, or to change them, or to alter the general contractual conditions. In theory the written general contractual conditions have the meaning of such draft of contract which serve as a base of negotiation, and which contains many important elements of the contract "prefabricated". The customary content of a blank, is the definition of services with quality indexes, a reference to

co-operational liability (perhaps to the concrete liabilities of the emitter of blaks too) further, clauses regarding the completion and the braking of contract. The general contractual reserves do not contain the name of cliant (or rather one of the cliants), the definition of quantity and assortment of services, the time and scheduling of fulfilment. In the agreement above the forwritten text, the cliants can specify the concrete form of co-operation, the exchangevalue, respectively the ways of settling the exchange-value. If the blank is of aid to signing the contract, – and has no other intention situated behind – the cliants can discuss about the forwritten text too, and can agree by their own consent of will in the conditions the blanks do not contain. Simplified the cliant can alter the general conditions, and they form the elements of contract not written there, according to their own decisions. The situation is different, if the editor of the general conditions of contract wants to apply pressure to the cliant by specifying onesided advantages, which could come to such mesures, to oust the partner of the market, for being unable to undertake them. The possibility of defence against such afforts falls outside the contract signing, and out of the home-affairs of the client becomes a public-affair, the state with the aid of law – perhaps also by devices outside the lawstops, or try to stop the misuse of economical superiority. The for this pupose available civil-law devices will be mentioned in section. 3.

The other group of *specified contracts* are based on the *"general business terms"*. In its form is usually detached from the regulations of agreements implied to the "general business conditions". The rules of "general business conditions" are the "business regulations" becoming the content of the contract from *outside*. The signatory of a contract, signed with the editor of business regulations, – whether knows about it, or notmust submit to the rules of business conditions. In this range there is no place for argument, bargin, modification, leave, or exchange. In our country "the general business conditions", the "business regulations" are approved by the supervising authority of the emitting party. The approval is an act of the state. Even than, if the business regulation does not become a statue with the approval, (as with the approval does not become the constitutions of co-operative either), but the approval gives nevertheless an adequate normative strength to it all, not to be able to depart from its rules for either the omitter, nor for the other party entering into contract.

If there exists a business regulation, it is profitless for the other party to complain, for it is only possible, an adequat to the regulation, contract to be signed. Beside the business regulations, actually the party's will of act has not much to do about the origination of the contract. In contract with the owner of business regulation, the cliant decides really only about (if the signing of the contract is not compulsory, in cases, such as vehicle, and shooting guaranty insurance), of signing the contract, or not signing it. The will and the act of will have a role virtually by the contracts based on business regulations (for example life insu-

rance) only to decide the sequence of the importance of contraservices, the time, and methodes of delivery, for the agreements are again limited by the "business regulations".

However, the circumstances, established by the application of general conditions, or by business regulations, are qualified as a contract, because the agreement in its future existence will take a route, as if it were originated by the "two or more sided legaly affected unanimous act of will" (classical form).

The contracts of "individual", "incidental", "selfadjusting", often "out of law", are offering a considerably bigger part to the will of act.

"In the case of "involved individual" contracts, the "selfadjusting" generally is so complete, it entirely fades the role of statutory law, practically limiting it only to respect the cogent prohibitory signes.

..... the contracting parties, in almost all the cases have full disposal of the possible consequences of their legal relationship.

..... The comprehensive, intensive co-operation is often motivated also by the fact, that legal relations of such kind – because of the complexity of services, deviarication of laws and duties-, do not fall within the standards of provision, but they are of miscellaneous, or in fact atypical nature" writes Vékás.[17]

The selfadjusting character in cases of "individual", and "incidental" contracts, presents itself by instituting the contracts, really the cliants themselves. The result of their agreement is – sometimes amounting to volumes – virtually every single word of the contract. They set by, the dispositive rules, they pass the limits of standard, they stipulate the fulfilments and conditions, the aftermath of contract breach, and often the special ways of settling issues. Vékás explains it in general, why is this possible.

..... By most of the cases of selfadjusting contracts, – from the point of view of either the economic power, or the juristic erudition – principaly balanced partners with mutual, or similar prospects, are facing each-other"[18]. The observations in our country indicate the same, still we have to make two small corrections to the generaly right fact-finding of Vékás. The first correction: in the "individual contracts for investments at home, though the partners in opposition have the same, or similar economical, and also juristic eruditional power, are no equal partners, because of the alarming shortage of investment goobs, and capacity. Even by the contracts of buildingmaterial trade and commerce, because of the shortage of investments and the lack of capacity, the constructor prevails over, and the investor can do nothing, but to accomodate. The second correction: it may be, that the two, or more, equal in power, partners can not prevail over each-other, therefore the bindung is correct, however to make use of the result, the produce of the contract, in many cases are elements, (for example organizations financed by the state budget, individuals), inferior to them., (the premises of the university were build on the base of a contract, which have been signed between investor and constractor, both quite indipendent of the university,

or like the home of the indificual, who gets it after a long, nerve-racking, life-shortener waiting, and heavy expenditure). The correctness of large investors towards eachother sometimes goes (decline) so far, that they unite their interests against the customer, and the consumer.[19]

This correctness on account of the third party, hardly could be "rewarded" by the law. We shall return to these problems. In the classical capitalism, the contract has been initiated to a weapon of services of the legal arsenal of turnover, by the fact, that to the accomplishment of it needed the act of will, indipendently established by two, or more productional, (productional-consumer), legaly free, from one another economicaly indipendent, depending on each-other only by the division of labour. The freely contracting parties with their justice statements have aided, to serve their own interests. Even, if they involved temporary risks, they were awere of this, it has been made in the expectetion of higher profit. The equal potentiality of parties have precluded the possibility, to prevail over each-other. *The will contract was the security of shering equal advantages and setbacks in the contract.* The role of will and agreement, as we described it up till now, have faded, and than became unnecessery at contract signing. The role of the will though has not fully expired, but does not rule the liability as far, as it did before. The parties in many cases, either in economical power, or in juristic erudition are not on equal terms. Under these conditions, even the freedom of contract, and the will of contract have lead to the spell-bound of the infirmer, up to a degree of having it be driven out of the market. The world have changed a lot.

In capitalism though have not ceased the rivality among the enterprises with similar functions, the structure of enterprise have so altered, the circumstances have so changed, that the target has become not so much to spell-bound the rival, – with them is possible to agree – but trough drawing up contracts with customers, or contractors in power inferior to them, to gain a profit in the economical existence, by those economic organizations, are qualified of doing it. If the contract, which only contains the will of one party, in words, written, on blanks, in general business conditions, feeding in automats, or manifesting in other distortions, grown on the weedy fields of economical difficulties, is not capable to keep all viable branches on the market, or to defend the customer, or to protect the might be, but in power inferior party from the stronger other mighties, the state and the law enter by force into the private life of the parties, to defend both or one of them, against themselves, and against the other one. Since these objectionalbe phenomenons mutatis mutandis, can also occur in socialist relation – it showed by what was said – and the speading of them is undesirable for either the individual, or the society, we are searching an answer to a kind of legal means, to keep the *up-to-date contract* as such institute, where the parties are equal, and can equaly serve the interests the both of them.

Undoubtedly, the free will is generally the unsuitable way (it does not mean, that it has no significance, and not to be kept, on the contrary,

fortifying, widening it, where it can function in effect) for it plays no role in the effectuation of many contracts, and where it possible is, could give a rise to the contrary, as it has been created for, by forcing the will of one party over the other one.

This situation gives a new tasc to the judge, to the legilsator, and also to the jurisprudence. Now the judge has to inquire not so much – though in the absolute meaning of it he can never disregard it – whether the contract is in accordance with the will of the parties, but *whether* the contract is a *righteous* one. The legislator is doing his job well, if he gives protection not only against the will in contract within the range of classical reason for abate, but on one side by multiplying them, on the other side with other means relating to law, (for example penalty on economy), by positively specifying the content of each contract, respectively by putting up new prohibitory signes to promote the establishment of *righteous* contracts. The jurisprudence has to try to "renovate" the old devices collestion, for also the conventional devices to be able to enter the list in the interest of new tendencies, and has to search new tendencies to secure righteousness of contract. The idea of the righteousness of contract, first emerged in the bourgois jurisprudence. This is an idea, in my opinion, what the socialist law can also profitably employ. The equitableness of contract equally promote the interests of parties in legal relation, – regardless, how that situation came into existence, which lead to legal consequences –. *The criterion of righteousness is the equal serving of interests.* The righteousness is a demand of contract *between partners in their relationship.* The socialism however, can not be satisfied with the success of this demand. Therefore, beside the righteousness as a demand set towards the contract, must place an other one, the demand of *social usefulness.* But this demand should be placed in the first rate, or only, in the relationship to one another of economic organizations. Fron the individual could only be expected, not to contravene the inhibitions, it would be an absurdity and unnecessery, uncontrollable, superfluous demand, for them to think by their each contract, of its social usefulness.

An allowance for social usefulness however, could be rightly expected of the economic organizations. For example, from the enterprise of building-material trade, it is only fair to expect before drawing up a contract, to gather information from the party passing the order, of what they do want the building-material for, whether they want to contract for stockpiling, or to fill their actual needs. After these inquires the orders can be sorted out, to put the ones, who want to order for needs to be filled, in front of the ones, who wants it for stock-piling only. But because of the undertaking of material supplier trade is not a controller of its customers, this demand could only be established, if the customers are "outright" too with the contractor. This solution, even if it is more difficult, could lead to a better result, as the now existing, which shifts the responsibility of distribution to the court of justice. The undertaking has the possibility of this, on the base of the CLb. 206.§ (1) sec.. The court

of justice in the lawsuit of civil case (economical) could inquire the social profitableness of contract, and could state, that the contract is against the CLb. 200. § (2) section, inevitably is contrary to the social interests, therefore is null and void, that the undertaking did not sign an agreement, because of the realisation of such, would be obviously against the interests of national economy, or the parties did not keep the rules of CLb. 4, § (1)–(3) sec., or have contravened the CLb. 4. § (2) prohibitive rule, respectively, have not fiven evidence of attitude corresponding with the CLb. 205. § (3) sec. or rather 277. § (2) sec. stated rules.

The rightousness and the social profitableness of the contract are the two turnpoints, which could secure the contract its function properly to fulfil.

Apart from the court of justice, the controling authorities too, should have a greater care about the contracts of undertakings belonging under their supervision. In the past, – when the content of a few blanks have become compulsorilly the content of the contract –, we could experinece often, that the controling authorities have the contractual primary conditions of blanks approved by them, their onesidedly profitable, or onesidedly disadvantageous conditions aknowleged without turning a hair, for the reason of not knowing anything about it, or the concerne attitude lively living at that time by the governmental offices. Both of them are calamitous errors. The latter one we can catch in the act, sometimes even today. It were time to exchange the attitude of *sectorial* and *suprvisory* to attitude of *national economy*.. The supervisory authority has milions of devices at disposal, to press the economic organizations under its control, to the initiation of *just* and *socialy economical* contracts. Such an aim, combined with the consumer's defence, could come to an adequate result.

3. As for the civil-law on the grade of codes, or other legal conventions has done already a lot to prepare adequat stipulations for the in circumstances altered contracts. The devices are for the purpose of both, in the stages of *before signing*, or rather *under the signing*, and in the sit ua-tion *after the signing* to secure the contracts to be *righteous*, and *socialy economical*. The instruments for the pupose.

a) Stating the establishment of contractual liability within the general rules of contract.

b) Making universal the co-operational liability.

c) The definition by legal measures the content of contract.

d) The definition of the minimal content of contract, in the interesse of consumer, respectively in the interesse of the economically infirmer.

e) The restriction of laying aside the dispositive rules.

f) To give possibility to action for avoidance at the reserves of contract.

g) To enlarge the cicle of instances, in which the court of law can verify the content, rectifying it, or keep the contract in force.

h) to enlarge the instances of invalidity.

i) to readjust the redressing of invalidity, and of invalid in parts.

The decreement of *contractual liability* has two reasons. The reasons in general, are to increase the defendance of customer in the widest interpreted meaning of it. A curious occurance in the competition can be observed, in socialist relations. The undertakings do not contend with rivals, the undertakings with similar profil, but with the consumer, or rather, with the economically less powered, or with the consumers of otherwise in economy more disadvantageously situated, and they try to get advantages by setting onesided conditions. Competition exists then, but it is a distorted competition. The other reason is certain shortage of assets – in the first place, the assets of investments –. The protection against the distorted competition makes the contractual liability justified, – it were unnecessery if there was a real competition –. This is namely, the possibility to prevent, that an undertaking in monopol situation, or otherwise more powered economically, the in their oppinion "unmanagable" customer, or transporter, to exclude from the market, or bring them in a disadvantegous situation there. The legislation has recognised rightly, that the possibility of driving out, or setting back of the other party, originating from not the *contractual*, (accordingly whether it is a transporter, or a customer), but from the *economical position*. Adjusting to that, starting off from the standard, on the market of industial products is the *transporter*, and on the market, agricultural mass-produce, the *customer* is bound to draw up a contract, respectively to overtake the whole of the quantity, offered by the producer. The liability of signing a contract must be also instituted, because of the shortage of certain assets, for it is the only hope to also to produce articles of main profil by certain enterprises, among them the not profitables too, (this would also not be necessery, if the prise and income policy had a firmer scientical basis), or rather to have from certain products, to get in the first place, where by the society is better needed as somewhere else, (investment devices) and finaly for the individual customer always to get products indispensably needed to cover their needs, (armed corporations). The following provisions of the CLb. are containing the detailed rules: "The provision of law can make the drawing up of a contract compulsory" (CLb. 198: § (2) sec. The liability and warrant tending to service by legal measures, and by orders of the authorities can be due, without contracting" (rare occasion) CLb. 198. § (3) sec. "The provision of law canmake the preliminary contract compulsory" (CLb. 208. (2) sec. To prolong to the breaking point, or to bring about the failure of a contract is impossible by making statements diversely to the tender, or by gush of answeres". "In the case of liability of contract signing, if the parties do not agree with each-other, the contract can be effectuated also by the court of law, and can state the content of it". CLb. 206. § (1) sec. can supplement the non essential, insufficiency CLb. 206. § (4), can establishe the preliminary contract and on the basis of preliminary contract also the contract. CLb. 208. § (3) sec. and (4) sec. The provision of law empower the court of justice (CLb. 239. § (3) sec. to establish the content of agreement in case of litigation of not valid contracts, respectively to

establish, the contract between the parties. And finally: In the case of cancellation of a long existing connection of productive, co-operational, and commertial connection – unless otherwise provided by statute – the court of law, in the light of interst of the social economy, and of the apprecialbe interest, can for a definite periode, establish the contract. (CLb. 206. § (3) sec. By the lack of contract, in practice, the court of law can only, by the wish of the customer, establish a contract, – the transporter consequently can not foist in the potential customer, the poor, unuseable, or regardless of the needs produced products. Even the breaking of a lengthy connection, could only in case of request by the customer, leed to juridical contracting. Now, the CLb. 206. § (3) and the statutory provisions, containing the detailed rules of economic organizations, do not have such restrictions. It is likely, that by the breaking of a longer contract, the reason to establish a contract, in practice, if the subject matter of it serves certain industrial products, will be on the request of the customer, and in case of agricultural produce, on the request of the supplier. The staturory law by the instances of delivery-contracts, offers a large scale of authorizations to juridical interventions, for example, the quantity of the part completion can be decided by the court of justice, if the parties did not stipulate in the matter, or the stipulation is non unambiguous (CLb. 380. §). The modified CLb., in more of its parts rules the *co-operational liability*, in the 4. § (3) sec. co-operation in general, in the 205. § (3) sec. co-operating by the signing of the contract, and in the 277. § (3) section co-operating in the ranges of fulfilment. The co-operation is one of the requirements of functional and bona fide legal practice, and of obligational fulfilment, in situations where it is needed. The contractual relations are of this kind. After entering the co-operational liability into the general rules of agreement, there is no need to mention it again, by any kind of contract typ. This rule stands for all contracts. However, there is no doubt left in anyone, that it will have significance in the first place, by the contracts with long lasting bindungen. A remark seem to belong here for the practice too. It happened very often, that by general contractual conditions too, – which are, as it is known, in case of acceptance, equal with the contract –, the parties, respectively the issuers of the blanks, repeated the legal provisions of co-operation, but have said no more about the field of co-operation, and about its detailed methods. It was even before now not suitable. From now on, to repeate the general convention, will be all the more unnecessary. The concrete form of co-operation, must be put into words, instead.

It is an universal fact, in the positionally changed contract, *the growing of cogency*, the ranges of those contracts, which automaticaly become, the tenors of the contracts. The cogency is an instrument, also against the uneven, unequitable, socially useless tenors of the contract. Gleaming in the CLb., we find among the general rules of contract, the warranty to state, the tenor of contracts. "The provision of law is permitted to define the single elements of tenor, and is permitted to state, to have them, as elements, even in that case, if the cliants stipulating

contrary. (CLb. 226. § (1) sec.). Never the less, the provision of law can change the tenors of the contract, drawn up before it came into effect, only on rare occasion, (respect to the agreement of cliants), in such case, need not unnecessarily prolong the contract with original tenor, – which is deformed by the later affected provision of law, –, it could bechanged by the court of justice on the request of the cliant, and the cancellation of it is also permitted. (CLb. 226. § (2) sec.). This cancellation is also due in case of the in meanwhile change of prarces. [CLb. 226. § (4) sec.]. The rules of single contract typs, ire containing mainly the rules respecting the liable tenors of contract, but some of it falls to the general part of contract law. Such are: The CLb's ordain of the specification of penalty 246. § (4) sec., the restriction of exclosing the liability, cited already (1. point) (314. § (2) sec., respectively, the rules of the 318. § (2)–(3) sec..

The contract's tenors of the economic organizations, establishes mainly, the provision of law, by compulsory force. "To depart from the orders, relating to transport-contracts, is possible only so far, as it is allowed explicitly by the statutory law". (CLb. 386. § (1) sec.). Stated the same by the 401. § in the case, if the parties of contract, are economic organizations. The forthcomming of cogency reflects in the rules of single contracts differently.

a) The statutory provision compulsoryly establishes, virtually the whole – normative determinant – tenor of the contract, *b)* the statutoy provision establishes – in the defence of the in firmer party – the minimal tenor of the contract, *c)* the departure from dispositive rules, though it is not compulsory, but it is worth considering by the cliants, and by the court of law, is beeng binded to particular conditions. *The statutory provision stipulates* with compulsory force, the normative, definable *tenor* of *transport-contracts*, of *public utility-contracts*, and of *undertaking kind of contracts* of the economic organizations.

The statutory law defines by obligatory force, *the minimum behaveour* of the economic organizations at the travel-contracts. [The 1/1978 (III. 1.) MT sz. rule]. According to the pointed out rule, the departure of the rules of travel-contract, for the travel-agency, is only possible, in the benefit of the traveller. The agency is allowed to tooffer more, can take more care, can take upon more responsibility, but less, as it is defined by the provisions of law, can not.

The *half congent* or *strongly dispositive* rules, have almost without notice, – though not by chance – been inserted into the rules of the congent and the dispositive. The meaning of dispositivity originally was, that the cliant by the contract, could devert, without further ado, from such stipulations, if their interests have so requested. The dispositive rule has been established by the law, as a *regard of standard*, to offer it to the cliants, as optimal solution, to settle their privity. In the times, when, practically in all goods-contract equally situated goods-owners have taken part, the dispositive rules have lived their golden age, the parties have really departed from the rules only, when their relations have much differed from the standard. The ignoreing of dispositive rules,

or substituting it by other agreement, fulfilled the interests of all parties. That was also their intention, so, in plural. Of course, a piece of trickery, had not scared any of them away.

However, since the world has got so far, that the economical life brings into contact with each-other, the large adn the small, the powerful and the infirmer, the legaly erudite and the ignorant, the large the powerful and the legaly erudites have soon realised, that by putting off the dispositive rules, they are gaining a new competition device. "Therefore, the general putting aside of the dispositive rules, by the onesidedly worked out business conditions, is by no means suitable for the aims of the dispositivity, and the "law", created in general conditions expresses not in the least, the legislative will behind the individual contract standards"[20]. The dispositive rules play a very important part at the legal realization, by the economical transactional aimes, also by the interests consideration, and by the distribution of risks.

Now, the refined technique of legislation, has found again, – in my opinion – the right solution. The CLb. has also worded two instances of the departing of dispositive, not in principal though, but the one who can read, will understand it.

The general precept: the dispositive rules, can be put aside. The particular precept: there are dispositive rules, which are forthwith possible to be put aside. But there are such ones as well, – and it will be good, if the practice also notices it –, that can be only disregarded, in the case of particular conditions. The legislation has created such rules, concerning the individual contract standard, aiming to prevent, the visually corrupt practice of the economical overpower. The turn of legal technique: it is possible to depart from the dispositive rules, when it is expressed in an *"exeptionally if"* form. The cliant, who wish to depart from the dispositive rules, – in the trial – has not only to prove, the agreement about the departure with the other party, but has also to prove, that the *"exeptionally if"*, has been realised too. Example: According the statute of 14/1978/III.1.) MT. sz., containing the detailed rules of economical produce marketing contract, if the producer is an economic organization, the place of fulfilment is, the company of the growers.[21] The rule deciding the place of fulfilment, is dispositive, but the wording of it shows, that the legislator holds it more desirable as usual, it to succed, with other words, he wants the parties not even with "mutual agreement", to depart from the solutions of thes tatutory provision. Referres to this, the second sentence of the 6. § of the order in council; a "depart from the agreement sits *particulary* than, if the qualification is possible only, by the instruments disposed at the company of the customer".

The *blanks* were often mentioned. These are the *standardised contracts* of *massturnovers* induced by *massproduction*.

Vékás points at the fact, that "the basical danger of standardised contracts is, the exploitation of the situation of economicaly infirmer, and of the legaly infirmer."[22] The onesidedly profitable conditions of blanks – everywhere they were issuedhave given a rise to vivid disagree-

ments.[23] Only the socialist civism stayed speechless for a long time. It had its reasons too. Untill we beleved, or we had to beleve, in the *hereditary* character of the socialist state, not even the thought of it occured, that the blanks of socialist large concerns – which were approved by their supervising authority – do not have the best solution. Only after the racionality has replaced the rapture (it did not happen easily)[24], the science of civism has beginn to notice, that all that "stately" glitters is not gold. The fight had began against the blanks. It was a sensible fight against the blanks of that time, because of their content and also because it was compulsory. Then we did not realise, that there could exist a good blank, and there is a bad one too. We were looking for the mistake, in the form of them, and not in the circumstances hideing behind them. But it has been clear by the time of modification of the civil law book, that legal entities using the reserves of standard contract, can use the blanks to specify onesided advantages for themselves, but their intention also can be honest. The 209. § of the CLb. zherefore rules: "If the legal entity by the signing of the contract is employing such onesidedlyspecified contractual reserves, *which secure unjustified, onesided advantages for them*, the damageing clause could be actioned for avoidance by the in statutory provision separately specified public, or social organizations." The cliant, who is contracting by reserves securing onesided advantages, have also the possibility to action for avoidance of *the contract* [CLb. 209. § (3) sec.]. In the case of succesful inpungment of the blanks, the court justice can state the rescindment of prejudical stipulation, – with force, comprising to all parties –. If the case of action for avoidance, on behalf the plaintiff, is well based, the force of decision includes only the plaintiff (CLb. 209. § (2), respectively (3) sec.. It is a good rule, if it is also in the use, it solves many problems easily.

However, the 209. § of the CLb. allows the action for avoidance by the general reserves of agreements only. It does not mention the possibility of action for avoidance of "business-regulations". It were time to look around there too. Some of the issuers of business-regulations have became very impertinent. Example: The Public Insurance Company in case of delay in the payment of motor-car insurance fee, 200.– Ft. extra charge must be paid. Is it possible to tolerate that? With almost 100%, – I do not even know what – must the delay be paid off, regardless, it is imputable to charge, or not. It is a matter to think about, the action for avoidance should not be made possible, also for business regulation at the court of justice? Were it not be sensible, to consider the constitution of the court of justice, functioning in such matters, to determine for the upmost predomination of competency?

Up till now, we were going into the details of up-to-date provisions, concerning the situation before signing the contract, or rather with the requests of them, now in the following we shall talk about how the civil-law helps, after entering into the contract, their *equitableness and social serviceableness* to succeed. The object of services in the contracts of national economy, are great amount of products, for servicing , or for

founding a project. Today, the party passing the order, however precizely estimates the needs during a long-term agreement, – yet the agreements between the economic organizations are mostly like that – the needs, during the time could change, could also cease to exist. To prolong the agreement with original terms, could bring great disadvantages to any of the parties. The up-to-date law, even therefore does not insist on the principle of the "pacta sunt servanda". For the party wanting to modificate or resile from contract, the law offers two solutions, the modification of contract, the cancellation, or rescission of contract by law, and the cancelltion of contract before the start of fulfilment. The modification by law, for each contract of the national economy, is possible. A special case of that is the modification of the, on the base of contractual obligation, signed contract. The difference is, that the court of law can modify the contract *according to the general rules* of contractual modification, not only on behalf of the parties, (CLb. 241. §), but *in the interest of national economy* too. What is more, the court of law can not only modify, discontinue, or resciss the contract, but can also keep it in force. "In the scope of contractual liability, the law is allowed to modify, to discontinue to avoid, or to keep in force the contract, *also* in the intrest of national economy" (CLb. 206. § (2) sec.). The reason for this intervention of law is, to keep only the *socially beneficial* contracts in force. But they again should stay. Whether there is a liability of contract signing, or not, *the one who orders* could discontinue any time the contract with transporter, or undertaker, if he is prepared to recover the transporter's, respectively the undertaker's damages. (CLb. 381. § (1) sec., 395 § (1) sec.). *The legal consequences of voidness are also characteristic.* By the appropriate comparison of Gyula Eörsi[25] the rescinded contract is an *ill* contract. But the illness is either deadly, or curable. If it is deadly, there is nothing else to do, but to discontinue it, – and as far as possible – to replace the condition existed before the agreement. If the illness is curable, the patient must be saved.

The jurisprudence has urged this solution for a long time now, the legislation by the individual contracts also proceeded so, but till the last modification of the CLb., the reason to abate according to the general rules, lead to discontinuance, the result of this modification of the CLb., is in the (2) section of the 237. §. The main rule henceforward, in the case of rescindity is, that the condition before the contract, must be replaced (CLb. 237. § (1) sec.). The course of action is by all means not the same. "The denounced contract could be declared valid, if the reason of invalidity – especially by the case of usurious agreement, because of their misproportioned services, or rather in case of unjustified onesided advantages secured for the legal party, through eliminating the unproportioned advantage – can be ceased". (CLb. 237. § (2) sec. second sentence). In the case of partial invalidity, the main rule stays the same, if the agreement in any of its part is invalid, (partial invalidity) the whole agreement becomes void. Exceptions are the partial invalidity of the contracts of economic organizations." If the contracts between economic

organizations are partly invalid, the legal consequences are referring only to the invalid specification but the court of law has the right to denounce the whole contract." (CLb. 239. § (2) sec.]. As it can be observed in the specific wording of the statute, the invalidity of any one part of the contract, do not have effect on the rest of it, the contract stays operative in the parts, untouched by the reason of invalidity and to denounce the whole contract is only possible by juridical decision. If the originally denounced contract will be reenforced, must be taken care, that all stipulations of the contract are kept. The rule of the CLb. 238. § (1) sec. serves that purpose. In the case of ratification of an invalid contract, the liability of parties by breaking of contract, concerns them the same way, as the contract were valid from the beginning."

4. In the course of modification of the CLb. in 1977, the *variety of contracts*, inserted in the particular part of the contractual – law, have *multiplied*, but inspite of this, the number of *mixed*, and *not typical* contracts, have increased in the practice. This contradiction was realistic and logical. The increase of contract typs is outstanding by those contracts, where the subjects are, (or one of them), economic organizations. In the ranges of contracts for transactions of mass-turnovers, tanding to deal in goods, and not of enterprising nature, has emerged the public-utility contract, and the purchasing agreement of retail-trade of the economic organizations practiseing smalltrade activities, as distributors for their regular purchasing. *The municipal sevices contract* (CLb. 387 – 388. §), as a contract typ, has gained access to the CLb. now. "The range of public utilities widens all the time, ang grows the importance of it. The CLb. has to enclose the basical regulation of the public utilities, as contractual connestions", states the 3. item of ministerial reason commenting on the CLb. 365 – 397. §.[26] The reason to single-out this reason is, to secure the party's equality, to exclude the licenses-for executive power of economic organizations, and to eliminate insecurity, origining from the despotism of serviceing organizations, on this vital field of utility services, (the utility trade can refuse to contract, can denunciate it, or interrupt it, and can restrict the servicing, only in the instance offered by the provision of law). It should be also noted, that an enterprise typ, to comply with such strict requirements, had to be called into existence. Therefore, the enterprisal legislation, has singled the municipal services (public utility) out from the other enterprises, and ruled their status specially in the national economy.[27]

The regular purchasing of economic organizations, displaing *small-trade activities*, has gained a part in the CLb. too, by the modification, – even, if it is, in a form of indicative rule – CLb. 386. § (2) sec.). From among the detailed rules of the 7/1978 (II. 1.) MT. sz. departmental order 23 – 33. §, indicating the strong intention of the legislative, to influence this kind of relations of the economy too, by stout rules, based on the principles of the civil-law. In tre ranges of transactions of *enterprising tenor*, we can get to know, also a populated contract family, in the modified CLb. 390 – 416. §, but some part of the relatives, stiludid

not get into it. The 7/1978 (II. 1.) MT. sz. order in council 44–110. §, are containing the sub-tenors. The separatelly named contracts i ϱ the CLb. are: the building – contract CLb. 402–406. §, the installation contract CLb. 407. §, the project-contract CLb. 408–411. §, the researche-contract 412–144. §, and the ravell-contract CLb. 415–416. §. The mentioned order in council, regarding the transport, and the enterprising contracts of economic organisations, takes still further apart the contract tenors in the CLb.. Rules separatelly, attached to the general rules of enterprise, about the main-enterprise 44.§, includes the specified rules of building-contracts 45–59. §, establishing separate stipulations by the contracts, signed for repair works at residental buildings 60–65. §, the 66–75. § of the order, establishes rules for installation-contracts, departing in many parts from the building-contract, – though this activity also belongs to it, on the basis of 407. § –. The order has a separate paragraph for the contract of motor-car servicing 76–82. §, for detailed stipulations of the planning-contract 83–89. §, there is a separate chapter for the technical managemental planning contract, separating it from the planning-contract itself 90–93. §, for the research (developmental) contracts 94–102. §, and for the accomplishments of researches (developments), contracts tending to the realisation of them in practice 103–105. §. Closing the line of newly particulated enterprisal contracts, is the building experimental contract 106–110. §. This is not the statute, which includes the detailed stipulations of the travell-contract, for it belongs to the 11/1978 (III. 1.) MT. sz. order in Council . We could also mention the company -law, which also have new solution in both, the CLb. 568–577. §, and also the specified stipulations of the associations and companies, included in the 1978 N°4. provision of the law, and issued for its enforcement 9/1978 (II. 1.) MT. sz. order in Council.

Also there is no lack of tenors, sub-tenors, or variations. The legislator tries to respond to all new occurrences. He disassembles details the classical contract tenors, he is not being stingy by the recognition of the new, the aparting from classical, and yearning for an individual life contracts. But at the same time he keeps them in the family. The statutory provisions are always hinting at the now mentioned cases, if the doubted case could not be settled satisfactorily by the rules, worked out for single variations, than must be applied to the more general rules of transport, or enterprisal contract. In reality – in my opinion – this many kind of "named" contracts do not form separate contract tenors, we could at the most talk about, *sub-tenors,* and *variations* within the sub-tenors. Bearing this in mind – unless we do want to brake to pieces, or close hermetically from eachother the contract variations of the individual, enterprisal natured activities – carries great importance on practice. In the first part of our dissertation we have pointed, at the connection, between the standard, and the general rules, specifying the meaning of the general rules, relating to the contract, now one level further down, we emphasise the unifying capacity of the classical tenors,

opposite with the tendency to break off by the sub-tenors, and by their variationen.

5. There are many tenors, the sub-tenors are even more, and within them, are mass-variationen, yet still groes the number of mixed, and not typical concrete agreements among the economic organizations, respectly, among the contracts, instituted with the co-operation of economic organizations. It has three kind of reasons.

a) the backwardness of the singular part of liability claim,

b) the integration of activities separated from each-other, in the interest of solving a complex program,

c) the animation of the tendency of "self-ruling" in the ranges of "individual", and "singular" cases,

In the praise of the general part of liability claim, we were not mean in searching the most beautifulladjectives, but about the particular part os the CLb., with the most withhold, we have to say at least so much, that in some of its parts, is not up-to-date. Also not up-to-date is the ruling of such activities – unfortunatelly –, which will have always more significance in our modern economy, and have a great part in the assets turnover of economic organizations. I hold it to be such kind, the rules of consignment – in a way the assignment – of transportation, and affreightment. The affreightment in the CLb. even today, is build upon the sheme of "A" consigner, with "B" conveyor, for "C" consignee – perhaps – let to dispatch something. Today it is not typical in transporting conditions. The connections between the parties are constant, manysided, and concerne many kind of activities, the conveyor fulfils complicated servides, the co-operation becomes everyday like, the cases of contract breching show other variants too, as were taken in account in the CLb., the rules of liability in the CLb. are sticking to the classical stock, to the conventions, and can not very well adapt itself to the changed situations. For the Ministry of Transport and Post-offiec, a research by the controlled Telecomminication and Technical College in Győr, as sub-contractor the ELTE juridical post-graduate school has organized a team to inquest the conveyoral activities, has found, that affreightment in accordance with the opening pattern is rare, and not at all suitable to be the base of the affreight-claim. The rules outside the CLb., concerning the typical formes of the transports, (railway, water, motor-car transports) have taken the changes into consideration, in large, (we hope, it will still more be considered, in the now under "renovation", the Regulation of Motor-car Transportation GFSz.), but we do not see the signes of the changed reality in the CLb. The modernization of the general rules of liability claim, was succesfull. The preparatories of the modification have succesfully managed, the setting into the CLb., and the modernization of the typical – untill now separatelly kept from the CLb. – contracts of the national economy. In the following years, the attention should be turned to the intensive examination, and to the stating of facts by the mentioned contracts, in the interest of allowing

the law to give help to these activities too, with the knowlegde of these results, by instruments fitted for today. But untill that happens, the man of practice can only brwe a mixed contract from the single elements of various other contracts, and if it does not work, can only put aside the official law, and solve the problem by an atypical contract.

The *activities* – are also ruled by the law – *differenciate*, but the tasc of them, will be always more *complex*. A contract, wanting a complex technical, economical, and legal knowledbe, could hardly be brought togeather within a notorious standard, and it is hard, very hard to settle the induced argument, – by pressing the contract in any of the standards –. It is useless to increase the number of standard, the sub-standard, and the varied, by the legislator, if the reality does not fall into line with the variant, to put it in more simple wods, the situations adequat to legal variants, are not happening, or not by themselves, to be possible to cover them completelly by the alternative version. Especially, the contracts tending to investments and associations are tackleing many organizations – but it is oft, by other kind of contracts too – which, – perhaps also expressed with legal variants, sub-standards, and standards – by the concentration of the differentiert activities, to solve a complicated problem. Such a contract must inevitably be a varied contract, – in the bettercase – but, if for the inclusion of any necessery activity, there is no legal variant, the contract will be *atypical-varied*, or simply *varied*. The legislator by working out the standard, the sub-standard, or the varied, attains mainly, that instead entering into an atypical contract, and as such easily becoming an out of law agreement the parties enter into a varied contract, where the orientation with the help of the general rules of contract, is much easier, as in the atypical contract. We have said already, the more standards, the more varied contracts, the atypical ones, and also the more of the varied and atypical contracts, the role of standard rule will be more significant. This is the only way to keep some kind of order by the agreements, and to form them after their characteristics in a row. There is a tendency to "selfadjusting" among the participants of "singular", and "individual" contracts, because of the reasons we mentioned, and otherwise too. Vékás[28] and Eörsi[29] too illustrates by many examples, what it means, if the contracting parties, or only one of them, (both cases have instaces, the first one, when two powerfull enterprises signe "singular", "individual" contract, and the second one, when a very powerfull stands against an infirmer, or against consumer who is manipuliert by the infirmer), but the dispositive rules of law aside, (the large consernes are faceing each-other from the position of power-balance, and in the situation of powerfull against infirmer, from the position of superiority of power), replaceing it with. an agreemenetn departed from that, respectively with a dictate. The result of them, it the first case is the looseness of the lawfulness, and in the second one the conquest of the infirmer. The "selfruling" stepped into the place of dispositive rule, often come into being within the limits of the law, but sometimes also outside them. The parties are keeping,

at the very best, the stricktest restrain norms, but in the place of official law, are placeing their "private" law. To proceed against such agreements before the court of justice, is hardly possible in the hope of, the right in the verdict is also being the right of the parties, therefore: "The contractual litigations are often taken away from the court of justices, trusting them to different corporations, to business federations, and the rules in their hands not necesserily succed, which would have been succeded in the legal action. Specially in the contractual connections of large concerness, they make themselves indipendent of the law, and of its mechanism: they settle the arguments out of court, on commercial base.[30] It is to understand after this ..... with the establishment of up-to-date capitalism in the U. S. A., the central figure – "legal honoratior" – is the legal adviser of large concernes and chief-banks, and not the judge.[31]

Such a contracts, I call an "*outlawed contract*". Why should we in the socialist jurisprudence occupy ourselves so intensive in a study "criticizing the capitalism", not with the "intention of denouncement", but in a study purpusing to analyse the newest developmental tendencies of contractual connections, with a special attention to the relations of the large concernes, when the situation here in socialism is "quite different". Therefore, because the conditions on one side are not different, and on the othe side, even if they are others, certain occurances in enterprisal speres are differring not at all. I only want to mention, that economical overpower exists here too, competition – deformed competition – gives also here, we have monopol situations too, also standardisation, and an intention of selfruling leading to "contract out of law" also exists. At the early years of 60's, I have pointed out in the researche, completed on behalf of the National and Jurisprudencial Institute, that the undertakings in food-industry – their blanks at this time still compulsory – how many onesidedly advantageous regulations, and how many conditions discriminating the farmer have they contained. By the facts-examinations, and consultations – connected to the already mentioned KPM. research – it has become evident, that in the "individual", and "occasional" contracts, signed for enterprisings of great importance, there is a definite tendency to self-ruling, to the evasion of law, and to settleing arguments on a "commercial base", that in such arguments the central figure is also the legal adviser, that the business friendship should not be risked here iehter, by legal actions involved on behalf of some kongent rules. I do not even want to mention, that the breaching of contract, signed on legal grounds, does not lead – not even against the original intention of one of the parties – to juridical proceedings, because going into war on behalf of the defoulting party, as negotiorum gestor, the great powerred County Council, the higher governing body, or even the party organisation, having in the official declarations quite a different attitude. That is how we are. It is no use to make objections, or to deny it. So much the more not, as such relations of (monopol situation, economical power dominance, the preference of certain undertak-

ings without reason) not indipendetly from the government, practicing economy-directive, and not as a result of spontaneous turn of circumstances, but with participation, still more with their launching, have developed in such a way, as it did, so, as it has assumed its form.

To search a solution in this scope, is not the business of civilists, in the first place, but the directive of economy. We have to make it right, there, where we spoiled them, – if it does not go –, have to ease the situation. In any case, also in the name of freedom established widest tenor of contract ist no good, if even the most important contract becoming the "contract out of law". I can not shere the optimistic standpoint of Vékás, in "the self-ruling does not always constitute new law", and only "it is the matter only of over-stepping the limits of standard contracts", "the parties in most of the cases are settling the rights, and liabilities, building them on the elements of ..... existing law, exactly the way, as the legal consequences of breaching a contract".[32]

The elements, the bricks, are surely derived from the law, but the building itself, and the method of effectuation ? Even with good elements can be of low-grade, and wretched. At first, in the interest of discontinuation of the basical reasons by the not quite blessed with, contracts, – agreements out of law –, I have thrown the ball to the economic organization, now, I take it back. The civilists have also work to do. In what ? For example: bringing up-to-date the stipulations of the contract, decided as out-of-date, to offer appropriate devices to the self-rulers" for shapeing their rights, liabilities, and responsibilities in complex agreements. It is not a small job.

6. The services are gaining always a greater part in the society. The law has drawn its conclus ons quite soon, from the mass spreading of water, gas, and electricity servicing. The statutory provisions relating to them, were however out-side the law untill the modification in 1977, when the "contract of public utility services" was enacted. (CLb. 387 – 388. §). In the next wave widened the heating, and the hot-water supply. This activities were accepted by the law, again outside the CLb., makeing it unfortunatelly possible to the service undertakings, to induce many, for the customer disadvantageous, conditions. In a short periode, of one and a half decade, many families have mechanised their housholds, the washmachinen, and centryfuges, vacuumcleaners, floorpolishers, and various houshold machinen have emerged, Radio (radios), recordplayers, magnetophons, have each family, and the younger generation carries their miniature versions to everywhere they go. There are hardly any families, which did not buy the world in the television screen, others have build their family home, or modernised the old one, or have bought a car. This material conditions of civilisations are making the life easier, untill the good bild, and the sound are alltogeather in the television, untill the plaster-work lasts, and the tap can be turned off, and the car runs, but what a nuisance is, if any of them go wrong. A few up-to-date tools must be always maintained, to have the machines live their longest possible life, in a state of fit to be used. In everyday

life, there is a definite displacement to the benefit of contracts, intermediating the services. There are two-there or more serviceing typ contracts to each kind of service, (repair, renew, maintain, keeping clean etc.), had the civil-law considered this, or not. Yes, and no. The result of this half, and half solution is, that with a few repair, and maintenance firm, scampered the horse away. They have taken little on, and for that, they did not hurry to secure fulfilment, and their liability was restricted to the minimum. The old warranty rule of the CLb. made it possible to charge the customer, with the fee of, to there and back transportations, that the change of the hopelessly bad machines have taken an endless time, that to reduce the guarantee to the minimum, or exclude it alltogeather for the quality of services, or the liability after the guarantee-time has only stayed in force, if the cliant could prove the falsity of the firm. The CLb. there, has made a great advancement by the modification. The modern rules of assurance, and guarantee, are fulfilling the claims of the customer. Stipulations are ruling the compulsory guarantee, by a number of products, and by cases of servicing. But there are still gaps too. The orders of 311. § of the CLb. could solve with difficulty, the correction of badly performed servicings. In the interesse of faultless servicing, therefore there is also something to do. Did anything happen in the particular part too ? Yes it did. Within the contracts for work, labour and material, a few activity of servicing natur, even in the view of their servicing natur, did get a singular rule, the order in council by the contracts of transport, and by the contracts for work, labour, and material of the undertakings has taken even more on, it named the contract of jobs for tenement house repairs, and for motorcar repair services, regulated many other named sub-standards, and variants too, taking into consideration, the servicing natur of them. It seems, that the court of justice, beside these rules, does not have to apply to the tactic of the "distortion of meaning" and need not apply to the not adequat rules of assurances, must no more apply for compensation to force the constructor to the repairing of errors, falling typically under the guarantee ranges, and to do that repair, to suit all requirements, as in the interesse of the consumer, the High Court og Justice has done, – in the ranges of faults by lodgings, otherwise, it has done it very rightly –. *There are improvements, but too few, and it is mainly outside the law, and there is no conception.* It is beyond doubt, even for a minute, that the basic standard of contracts, tending to services, is the *contract for work, labour and material.* One must lay hand also on this contract group here, about the same way, as by the transport contract group – in princip – were made separate rules for municipal services contracts. The single contracts for services are wide spread. After a thorough search of facts, the typicalness of them (good, or bad) could be gathered. Such a collection could also be adapted for generalization. After generalising the facts, in all probability, could such stipulations be worked out, which could enclose *mutual codes of the contracts for services.* It were possible to establish a sub-standard of the contract for work,

labour, and material, on the modell of contracts for building, planning, etc., which would hold togeather the typicalities of the allready formed contract variety of service natur, than it were perhaps not necessery, to make for each important service a different – the allready vast masses of statutory provisions – to swell with neverending series – new legal variety to establishe. Working it out from the principle of standard contract, would be possible to form factual contracts, perhaps also blanks.

Untillnow we were interlacing our sentences, giving attention only to services, offered by the undertakings. But serviceing is also offered by craftsman, small-contractors, and the number of them are increasing. It could come into question, that in the future, they (do not reach the level of co-operative) unite in a community. Even therefore, is not a last resort to squeese the enterprisal standard contracts. It also gives a reason to the intensiver arrangement of this contract group. In such a stipulation, perhaps, the signing of a contract could be made compulsory, could stipulate the liability of guarantee, the complexibility of repair, (exept, the contractin party does not wish it that way), the place of fulfilment, the responsibility for service, and cases of liability, where perhaps, there is a need for exeptional rules. It is still not enough. The service could not be the single object of the contract, but can be one of the elements of the varied contracts too, (avising, schooling, refresher-course, retraining, giving over technology, boring, examination of the soil, observation of the climate). I have noticed, that this services somehow, are passing by, – especially in the row of responsibility, and liability –, beside the main service. Example: in the contract for bulk delivery of produce, the customer singles out the seed, will decide on technology, will ordain, and choose the protectives, and the fertiliser manure, etc., in one word, representing typical service activities. But really, the legal codes keep deep silence about it. It is no wonder, if the party, which offer the service, in case of miscarriage happened through errors by the service, lie low, could also back out of responsibility and could be court only, with tricky, arbitrary interpretation.[33] It must be also provide for, that the legal settlements of those "hidden" services. Nota bene, if there will be a standard contract on its own for services, or a sub-standard within the undertake, could also provide help, by the arguments, origining from services, which are hidden, in the contracts for other kind of main service. Our contractual system have developed dinamicaly. The CLb., and other provisions of law, have forwarded it very much. In the next decades however, the changes will speed up still more, anr for keeping up with them, our contractual law, has the task of on one side the following up the tracks by the statutory provisions, on the other side, gathering the exploitable experiences, for allowing also the Codes to express the changes, and to be able to influence the further measures by its prestige.

NOTICES

[1] *Lajos Vékás:* The developmental centers of the contractual system. Akadémia publisher, Budapest, 1977 81 – 82. p.

[2] *Lajos Vékás* op. cit. 78. p.

[3] *Lajos Vékás* op. cit. 79 – 80. p.

[4] *Lajos Vékás* op. cit. 80. p.

[5] *Lajos Vékás* op. cit. 7. p.

[6] *Gyula Eörsi:* Comparative Civil Law .... Akadémiai publisher, Budapest, 1975 308 – 309. p. i. m. 308. p.

[7] *Lajos Vékás:* op. cit. 100. p.

[8] *Lajos Vékás* op. cit. 100 – 101. p. The original work Jörgensen, Vertrag und Recht Kobenhaven, 1968 44. p.

[9] *Gyula Eörsi:* About the Scandinave Right and Jurisprudence the editions of National and Jurisprudental Institute Budapest, 1974 44. p.

[10] *G. Szászy – Swarz:* the new juristic analysis Budapest, 1901. 285 p.

[11] *Szászy – Swarz* i. m. 285. p.

[12] *Gyula Eörsi:* Comparative Civil Law... 309. p.

[13] *Gyula Eörsi:* Comparative Civil Law... 235. p.

[14] *Gyula Eörsi:* Comparative Civil Law... 335 – 336. p.

[15] "On the fields of contracts, the development of the means of production, have lead, on one side to mass-production, and with that, to the standardisation of contractual reserves, on the other side, to the contrary, to individual contracts of technically, and legally very complicated, needing great, and often manysided proficiency". Eörsi 1. m. 232. p. Also see Vékás i. m. 94. p.

[16] *Vékás* points at the difference of the "blanks", and of the contracts have been signed under the "general business reserves" and taking also their equality into account, names the blanks, and also the contracts signed under general business reserves, standardised contracts. Vékás opcit 95. p.

[17] *Vékás* op. cit. 94. p.

[18] *Vékás* op. cit. 94. p.

[19] to reffer to such kind of summung up see Sárándi: The basic principles of the hungarian civil law ELTE State and Jurisprudental Faculty Acta Tomus XIXXX Budapest 1977 38 – 43. p.

[20] *Vékás* i. m. 97. p.

[21] The reasons for stipulating, see Sárándi: the contract of agricultural produce marketing, Jurisprudental Gazette Budapest 1978 11. sz. 661 – 672. p.

[22] *Vékás* op. cit. 94. p.

[23] *Vékás* cites tremendous amount of literature, on the 95th page could be found the 72th note of his cited work.

[24] forbiden recitals, proclaimed writtings, threats of long disappeared leaders are the mile-stones of this road.

[25] *Gyula Eörsi:* the general part of Liability-law, school-book publisher Budapest 1975 74 – 75. p.

[26] University notice, school-book publisher Budapest 1977 detail from the reasoning conected to the CLb. 365 – 397. § of the Civil-Law book

[27] the 1977 annual VI. Tv. issued for national enterprising, and for its executing 4/197. § (I. 18) MT. sz. rule

[28] *Vékás* op. cit. 94. p.

[29] *Eörsi* op. cit. 233, 259, 260 p.

[30] *Eörsi* op. cit. 233. p.

[31] *Eörsi* op. cit. 459 – 460. p.

[32] more detailed see Sárándi: the contract of agricultural produce marketing Jurisprudential Gazette Budapest 1978 11.

[33] more detailed see *Sárándi* N° 22 notice, cited of his study.

НОВЫЕ ЧЕРТЫ НАШЕЙ ДОГОВОРНОЙ СИСТЕМЫ

Проф. д-р. ИМРЭ ШАРАНДИ

(Резюме)

1. Противоречия общей обязательной сиды договора и правил договорного типа.
2. Новые черты возникновения договора.
3. Договоры заключенные при стандартизированных условиях и договоры индивидуального типа.
4. Расширение договорных типов новые важные договорные типы.
5. Расширение договоров направленные на обслуживание и отсутствие контрактовых типов типа обслуживания.

NEUE ZÜGE UNSERES VERTRAGSSYSTEMS

von

PROF. DR. IMRE SÁRÁNDI:

(ZUSAMMENFASSUNG)

1. Die Widersprüche zwischen der allgemein bindenden Kraft des Vertrages und den Regeln des Vertragstyps
2. Neue Züge des Entstehens des Vertrages
3. Verträge unter standardisierten Voraussetzungen und Einzelverträge
4. Die Zunahme der Vertragsarten. Neuere wesentliche Vertragsarten
5. Die Zunahme der Anzahl der Leistungsverträge, das Fehlen der Vertragsarten von Leistungstyp